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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/694,927	10/24/2000	Victor T. Huang	8863.73US01	1712

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EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	24

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TC-2400

Office Action Summary	Application No. 09/694,927	Applicant(s) Huang et al
	Examiner Lien Tran	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Oct. 9, 2002*.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-3, 7, 9-13, and 17-27* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-3, 7, 9-13, and 17-27* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 20
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. Claims 1-3,7,9-13 and 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katta et al in view of Savage and Taylor et al for the same reason set forth in paragraph 4 of the previous office action.

2. Claims 1,2,9,10,11,12,13,17,18,19 and 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami Nobuyuki (Pub. 03083536).

Nobuyuki discloses a batter dough containing wheat flour and 10-60 part by weight dextrin. The dextrin has a DE of 2-20. The batter is baked into a sheet; the resulting baked product is conically rolled up and formed into a waffle cone

Nobuyuki does not disclose water and the properties claimed.

It would have been obvious to add water in order to form a batter. The Nobuyuki product contains a starch hydrolysate having a DE in the range claimed; thus, it is obvious the product will have the properties as claimed. Since the product is a waffle cone, it would have been obvious to put fillings such as ice cream, yogurt etc in it because waffle cone is used for such purpose.

3. Claims 1-3,7,9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finley et al (EPA 0192542).

Finley et al disclose a dough and baked good made from such dough. The dough contains flour, water and sweeteners. The sweeteners are maltodextrin having a DE of 5-15, humectant sugars such as maltose, corn syrup, invert sugar etc and sucrose. The dough comprises no more than about 70% by weight the sweetening agent which comprises the maltodextrin, sucrose and

humectant sugar. The amounts of maltodextrin and humectant sugar used can vary depending upon the desired taste of the cookies. (see columns 6-7 and the examples)

Finley et al do not disclose the amount of sweetener and the properties as claimed.

It would have been obvious to one skilled in the art to larger amounts of maltodextrin and humectant sugar depending on the taste desired of the cookies. Finley et al teach the amounts can vary and such amounts in addition to sucrose can be no more than 70% ; so if larger amounts of maltodextrin and humectant sugars, then the amount of sucrose will be reduced. For example, one can use 40% of a combination of maltodextrin and humectant sugars and 30% sucrose; such amounts are within the teaching of Finley. Different sugars have different degree of sweetness and it would have been obvious to vary the amounts of the different types of sugar depending on the taste desired. As to the properties, the Finley et al product contains the same type of sweetener claimed; thus, it is obvious the product will have the same properties as claimed.

4. In the response filed Oct. 9, 2002, applicant states the Katta et al reference is not prior art under 102(e) because the attached 131 declaration shows that the claimed invention was conceived and reduced to practice prior to the filing date of the Katta et al reference. The previous office action mistakenly identified the Katta et al reference as prior art under 102 (e); the Katta et al reference is prior art under 102 (a) because it was issued as a patent on July 25, 2000 which is before the filing date of Oct. 24, 2000 of the instant application . Since the reference is prior art under 102 (a), a 131 declaration can not be used to overcome it because the patent was issued before the filing of the instant application.

With respect to the Savage reference, applicant argues Savage discloses a conventional cookie recipe that utilizes " corn syrup solids and there is no disclosure in Savage which would lead one to the claimed invention. Applicant argues the reference as if it was use alone. The Savage reference was only relied upon to show cookies having different shape. It would have been obvious to one skilled in the art to make the cookies of Katte et al to have different shape such as the one taught by Savage so that different filling can be inserted into the cookies to obtain different novelty products having different taste and flavor. With respect to the Taylor et al reference, applicant argues the selection of a low DE value is not obvious because the DE level affects properties other than sweetness. While this might be true, the DE level is certainly also an indication of sweetness. It is known that a sweetener with low DE value is less sweet than a sweetener with a high DE value. Thus, it would have been obvious to one skilled in the art to choose a sweetener having a low DE value if a less sweet product is desired. It is not necessary to show using an ingredient for the same reason as disclosed; it is only necessary to show why it would have been obvious to use such ingredient.

5. Applicant's arguments filed Oct. 9, 2002 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

December 18, 2002

LIEN TRAN
PRIMARY EXAMINER
Group 1700